DOE's meeting its contractual obligations and the Department's response to the recent court action.

Again, I wish to emphasize my pledge to work with the Congress in addressing this matter, consistent with the President's policy.

Sincerely,

FEDERICO PEÑA.

Mr. GRAMS. Mr. President, I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE NOMINATION OF FEDERICO PEÑA

Mrs. HUTCHISON. Mr. President, I am going to speak until the beginning of the vote. As soon as that is called and they are ready, I would ask to be interrupted. But I want to speak briefly on the nomination of Federico Peña for Secretary of Energy. This is a very important position, and one that I think will certainly have an impact on the energy policy of our country in the future. Knowing how important having a healthy energy policy and a strong industry that can produce our own energy domestically is to this country, I think this nomination and the support for Federico Peña is important to all of the Senate.

I am cochair, along with Senator BREAUX, of the oil and gas caucus. We are going to work this year to make sure that we eliminate redundant and unnecessary regulations on the energy industry so we will be able to go out and drill in our country for our natural resources. We want tax incentives which encourage oil and gas drilling, especially marginal wells and formations which are difficult to develop. These are important because we want to have energy sufficiency in our country. Not only does it create jobs, but it creates security.

A country that is dependent on foreign oil and gas is not going to be a strong country. It is not going to be a superpower. So, having a healthy energy policy in our country will be most important for us to be able to strengthen the ability to get oil and gas on our own shores.

I see, Mr. President, that our leaders are ready to start a vote. I will stop and then hope to be able to speak on behalf of Secretary Peña's nomination at a later time.

I yield the floor.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

AUTHORIZING EXPENDITURES BY THE COMMITTEE ON GOVERNMENTAL AFFAIRS

The Senate continued with the consideration of the resolution.

AMENDMENT NO. 23

Mr. WARNER. Mr. President, I see my distinguished colleague [Mr. GLENN], is in the Chamber. So, at this time, on behalf of both leaders, I ask unanimous consent that there be 5 minutes for debate equally divided on amendment No. 23; following the debate, the Senate proceed to vote on amendment No. 23 without any intervening action or debate.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, I do not object to this proposal for 5 minutes for debate equally divided on the amendment, and following debate, we proceed to vote. There has been a lot of negotiating going on here, as has been obvious to everyone. I think we have some satisfactory procedures worked out that will be generally far more acceptable than what we had prior to that. I look forward to the vote. I think that most people on both sides will probably be happy to vote for this because this is a way we get to a final solution out of the disagreements we have had here. I look forward to the vote.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I congratulate my distinguished colleague, because I doubt that we would be where we are right now had we not had the debate yesterday and the debate this morning. I think the Senator from Ohio would concur in that.

Mr. GLENN. I would, indeed.

Mr. WARNER. Therefore, Mr. President, I express my appreciation to the distinguished Republican leader, the Republican whip and others who worked on this resolution. The amendment, which was reported out from the Rules Committee, will be amended by the distinguished majority leader, and I will be a cosponsor, whereby we add the word ''improper.'' That reflects on the original document that I drew from, namely the Watergate amendment which we referred to several times on the floor. That contained that particular word, and it has been throughout the various expressions by the Governmental Affairs Committee as to their desire. But that does not in any way infringe on the continuing role of the Rules Committee or the continuing role of the Ethics Committee.

Again, there is a clear division under the underlying resolution from the Rules Committee that these three committees will work together as a team and, hopefully, resolve many problems relating to campaign reform and campaign finance and otherwise. I certainly will say to my distinguished colleague, and I see on the floor the distinguished chairman of the Governmental Affairs Committee, with whom I have had a dialog just about every day, their main focus will be on the question of allegations of illegality and the presence, or lack thereof, of illegality in the generic subject of campaign finance and campaign reform.

Mr. President, unless the distinguished Senator from Ohio has further remarks, I yield back the time and we can proceed with the vote.

Mr. GLENN. Mr. President, I don't want to get into another debate before we even get around to this vote, but I think the focus on where the wrongdoing is can be either on illegalities or on improprieties with the change that has been proposed by the leaders. I would not want to let it be said right now or let it be indicated that the main focus—what the main focus will be, I think, is up to the committee chairman and the ranking minority member to work out. I think we have language in here that will do that. It might be inappropriate at sometime to take up an illegality if it was looked at as fairly minor, or a giant impropriety over that, in our judgment, needed to be looked at first. I would not agree at this point that this vote we are about to take specifies exactly which direction we would go. I hope that my colleague will agree with that.

Mr. WARNER. Mr. President, at this time, I think all time has expired, has it not?

The PRESIDING OFFICER. The Senator has 30 seconds remaining. The Senator from Ohio also has 30 seconds remaining.

Mr. GLENN. I yield such time as I have to the Senator from Michigan.

Mr. LEVIN. Mr. President, I wonder if we can ask directly, the Senator, with this amendment, is not establishing any priorities between illegality and impropriety; is that correct? Either one would be within the scope, is that accurate?

Mr. WARNER. Very clearly we have drafted the language so that the word ''improper'' is added to the underlying resolution of the Rules Committee in two places.

Mr. LEVIN. And it is not given any lesser strength than the word ''illegality,'' is that correct?

Mr. WARNER. I say to the Senator, we simply added one word. It speaks for itself.

Mr. LEVIN. Except that our good friend from Virginia suggested there might be a greater emphasis on one than the other. Is there anything in this——

Mr. WARNER. If I did, I did not wish to infer that. I thank my colleague.

The PRESIDING OFFICER. All time having expired, the question is on agreeing to amendment No. 23, offered by the Senators from Mississippi, Tennessee, and Virginia.

Mr. WARNER. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. SPECTER. Before the roll is called—I withdraw my request, Mr. President.

The PRESIDING OFFICER. The clerk will call the roll on amendment No. 23.

The assistant legislative clerk called the roll.

Mr. DODD (when his name was called). Present.

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 28 Leg.]

YEAS—99

Abraham	Feinstein	Mack
Akaka	Ford	McCain
Allard	Frist	McConnell
Ashcroft	Glenn	Mikulski
Baucus	Gorton	Moseley-Braun
Bennett	Graham	Moynihan
Biden	Gramm	Murkowski
Bingaman	Grams	Murray
Bond	Grassley	Nickles
Boxer	Gregg	Reed
Breaux	Hagel	Reid
Brownback	Harkin	Robb
Bryan	Hatch	Roberts
Bumpers	Helms	Rockefeller
Burns	Hollings	Roth
Byrd	Hutchinson	Santorum
Campbell	Hutchison	Sarbanes
Chafee	Inhofe	Sessions
Cleland	Inouye	Shelby
Coats	Jeffords	Smith, Bob
Cochran	Johnson	Smith, Gordon H.
Collins	Kempthorne	Snowe
Conrad	Kennedy	Specter
Coverdell	Kerrey	Stevens
Craig	Kerry	Thomas
D'Amato	Kohl	Thompson
Daschle	Kyl	Thurmond
DeWine	Landrieu	Torricelli
Domenici	Lautenberg	Warner
Dorgan	Leahy	Wellstone
Durbin	Levin	Wyden
Enzi	Lieberman	
Faircloth	Lott	
Feingold	Lugar	

ANSWERED ''PRESENT''—1

Dodd

The amendment (No. 23) was agreed to.

Mr. GLENN. Mr. President, I move to reconsider the vote.

Mr. LOTT. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 23, AS MODIFIED

Mr. LOTT. Mr. President, I ask unanimous consent that the amendment No. 23 just agreed to be modified so that the word ''and'' is replaced with the word ''or'' each time it appears.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 23), as modified, is as follows:

On page 10, line 19 after the word ''illegal'' add ''or improper''.

On page 10, line 23 after the word ''illegal'' add ''or improper''.

Mr. LIEBERMAN. Mr. President, I rise today to support the Senate's wise decision to amend the scope provision of Senate Resolution 39, the funding resolution for the Governmental Affairs Committee investigation into campaign finance. I had planned to offer this afternoon an amendment virtually identical to what the Senate has now adopted. This amendment addresses what most deeply troubled me about that resolution: the restriction in the version that came to the Senate floor of the scope of the investigation that previously every member of the Governmental Affairs Committee unanimously agreed to. Each and every member of our committee—Republican and Democrat alike—had voted to authorize an investigation into both illegal and improper campaign finance activities. Unfortunately, before our funding resolution got to the floor it had been modified in the rules committee to preclude the Governmental Affairs Committee from exercising authority to look into ''improper'' activities, arguing that it was enough for us to look into only ''illegal'' activities.

Mr. President, I applaud the bipartisan decision to reverse that decision and to return the term ''improper'' to the scope of the Governmental Affairs Committee's investigation. Without the return of that authority, I was concerned that our committee's hopes of conducting a thorough and bipartisan investigation would have been dashed. We would have been forced to conduct an investigation that I feared would have failed to expose the ills of our campaign finance system and would have further undermined the public's confidence in the working of our political institutions.

The continuing revelations about the state of our campaign finance system may not only shake the American people's confidence in the integrity of our political system, but our own confidence and self-respect. It is therefore our obligation in Congress to conduct a thorough investigation into the cause and scope of those problems, into the extent of any illegal and improper activities that occurred, and then, on the basis of those inquiries, to decide what action Congress must take to prevent these things from ever happening again and what activities should be illegal. For that reason, and like each and every one of my colleagues on the Governmental Affairs Committee—Republican and Democrat alike—I voted to conduct a broad-based inquiry into the problems that have plagued our campaign finance system. In a unified and strong voice, our Committee declared an intention to explore and expose all improper activities taken during recent Federal campaigns. If there were illegal activities taken by anyone, we declared—whether they be in the White House, in the national parties or in the Congress—we planned to investigate them. If there were activities taken that some would call illegal, but because of a technicality in the law, may not be—still, we declared, we want to investigate them. And, if there were activities taken that clearly were not illegal, but just as clearly were improper and so threatened to undermine the integrity of our political system, we declared, then we must be able to investigate those too, so that we could decide what behavior is now legal that we want to make illegal. That is what we mean by campaign finance reform. On January 30, 1997, I joined all of my colleagues on the Governmental Affairs Committee—Republicans and Democrats alike—in voting to authorize an investigation that would do all of those things.

Unfortunately, some disagreed with the Governmental Affairs Committee's desire to expose all improprieties in our campaign finance system, not just acts that are illegal. In what I have been told is an unprecedented action, there was an effort to deny the Governmental Affairs Committee this jurisdiction.

Accepting that vote and limiting the scope of the Governmental Affairs Committee's investigation to merely ''illegal'' activities would have limited us in investigating what most people agree is wrong with the system; it would have damaged our ability to obtain evidence and subpoena witnesses; and it ultimately may have led to a partisan breakdown on the Governmental Affairs Committee over the meaning of the term ''illegal.'' The net effect clearly would have been to make it less likely for Congress to adopt campaign finance reform this session.

Let me give just a couple of examples of how this restricted scope would have caused problems for the Governmental Affairs Committee investigation. Most people seem to agree that our committee should look into the influence of so-called foreign money. Those supporting the limitation of our investigatory scope to illegal activities argue that that limitation has no impact on our ability to investigate foreign money. And, it is true that we have a statute, section 441e of title 2 of the United States Code that makes it—and I quote—''unlawful for a foreign national * * * to make any contribution * * * in connection with an election to any political office * * * or for any person to solicit, accept, or receive any such contribution from a foreign national.'' This provision has been cited for the proposition that any and all contributions by non-U.S. citizens or greencard holders to political parties is a criminal offense.

But as is often true with the law, not everything is as it seems. Instead, under the election law's own definition of the term ''contribution'' and the Supreme Court's previous interpretations of election law terms similar to ''in connection with an election,''—provisions, I might add, that those seeking to limit our investigation seem not to want to change—under those laws it is highly likely that the Court would find that section 441e does not criminalize so-called soft money contributions to national parties by foreigners. Let me say that again: soft money donations

from non-U.S. citizens likely are not ''illegal.'' That is because under the way our campaign laws now are drafted, soft money contributions are, by definition, not made in connection with an election, and only contributions made in connection with an election are illegal. Instead, ''soft money'' contributions go to fund party building and grassroots activities, as well as to help pursue issues advocacy, and apparently no statute says that foreign money cannot go to that. In fact, it is a similar statutory term that allows corporations and unions to give millions of dollars to the national parties, despite the fact that our Federal election laws make it illegal for those entities to make contributions in connection with elections for Federal office.

In short, under a strict reading of the statute, if foreign money goes for issues advocacy or for grassroots activity or for practically anything else but to fund a particular candidate's direct campaign, it is likely not illegal, and therefore the Governmental Affairs Committee, absent this amendment, would not have been able to investigate it.

Now I know that some will say that I am splitting legal hairs, and I would agree with you. It is splitting legal hairs. But, as a former State Attorney General, I can tell you that the splitting of legal hairs is precisely what often goes into making a determination of what is legal and what is illegal. For as long as our Bill of Rights has been in place, the enforcement of our laws—and particularly of our criminal laws—has not rested on what we think a criminal statute should have said or what we wish it did say. Instead, it rests with what Congress actually did say, regardless of whether you or I in hindsight wish we had said something different. And the reason for this is a very good one. Our Constitution requires that everyone of us have clear notice of what is and is not legal, and consequently requires us in Congress to say in precise and clear terms what is criminal and what is not. Whenever there is any doubt about whether a statute makes conduct criminal or not, the Supreme Court has told us on innumerable occasions, the law requires a finding against criminality. And I can say with confidence that that is precisely the finding our courts would make if asked whether foreign contributions for issues advocacy and grassroots activities violate our laws. So again, we would not have been able to investigate a critically important issue.

Let me give you another example of what would not have been within our investigation's scope had we not expanded it to cover improper as well as illegal activities. There has been a lot of criticism about soliciting or receiving contributions in the White House. Some have claimed that there was a violation of the criminal law based on a statute that says that ''it shall be unlawful for any person to solicit or receive any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 in any room or building occupied in the discharge of official duties * * *.'' But, as Attorney General Reno declared the other day, and for reasons similar to the ones I just cited, that provision does not make it unlawful to receive all contributions in the White House. Instead, it only applies to what the campaign laws define as a contribution—what we usually call ''hard money.''

This, of course, does not mean that it is proper for anyone to solicit or receive any contributions in the White House. And, even more importantly, it clearly does not mean that foreigners should be able to contribute to the DNC or the RNC—I think that neither is proper and that we need to fully investigate whether our elections were in any way wrongly influenced by people who have no business being involved in our political system. What it does, of course, mean is that we need to reflect upon the fact that our laws don't make these things illegal and to change our laws to make sure it doesn't happen again.

Now, none of this matters so long as the Governmental Affairs Committee can investigate both illegal and improper activities, because I can tell you for sure that foreign contributions—regardless of their legality—are improper and should be investigated and exposed. But had we not amended the Rules Committee's scope provision, we likely would not have been able to investigate these things because they are not illegal.

The problems with limiting our committee's scope to just illegal activities would not have ended with being forced to exclude critical issues from our investigation. No—there were many more problems with this definition of our scope. For one, it would have seriously jeopardized our committee's ability to obtain evidence and get witnesses to testify, and it therefore would have threatened the very ability of our committee to proceed with its investigation. After all, our committee has authority to subpoena only those documents that are related to the legitimate scope of its inquiry. If the scope of our committee's investigation were limited to illegal activities alone, then I would suggest that any attorney representing a client whose documents have been subpoenaed would have responded by saying ''my client did nothing illegal and therefore you have no rights to these documents.'' Our investigation would have been stopped dead in its tracks right there.

In sum, it would have been wrong on every level to limit our investigation to just illegal activities. It would have prevented us from investigating things that should be investigated, it would have led us to prolonged battles with witnesses who otherwise would be obliged to come forward and cooperate and it would have made it likely that the partisan rift we have thus far been seeing on the committee would grow wider rather than undergo the seriously needed repair we began making today. But the worst of it could have been the harm our institution will suffer in the minds of the public. Had we not expanded the scope of this investigation, the U.S. Senate would have gone on record, in full public view, opposing the investigation of unethical and improper campaign activities of Members of Congress. If that would not have been perceived as a stonewall and a coverup, I don't know what would be.

Finally, let me say just a few words about one other issue: That the Rules Committee could have separately investigated the improprieties I wish to see exposed by our committee. With all due respect to the members of the Rules Committee, for whom I have tremendous respect, that simply is not a viable—or a rational—option. As the examples I gave above demonstrate, although some of what is now under scrutiny may be illegal, most of it probably is just improper. The task of investigating the massive universe of improper activities is therefore an enormous one, as is deciding what should be illegal. In light of the facts that many of the same people will have committed both improper and illegal activities and that much of the conduct under investigation arguably would fall into both categories, it just would not have made sense for the Rules Committee to conduct an investigation that will, in many ways, duplicate what our committee will be doing. In fact, it was this precise insight—that it did not make sense from a resource allocation standpoint to spend taxpayer funds on duplicative investigations—that led the majority at the beginning of this Congress to wisely decide to consolidate all investigations in the Governmental Affairs Committee.

Mr. President, let me just close with a few thoughts on what the goal of this investigation should be. We're about to enter a long, dark tunnel, and the question of whether that tunnel has a dead end, or there is light at the other end, hinges entirely on whether we get serious about this campaign finance investigation and about campaign finance reform. The public didn't send us here to bicker; that's essentially what President's Bush and Clinton had to say in their inaugural addresses. They also didn't send us here to dicker endlessly, especially on matters of importance to them like investigating and straightening out our campaign finance laws. I hope that the showing of bipartisanship we made today in agreeing to return a broader scope to the Governmental Affairs Committee's investigation can continue through the rest of our investigation and, I hope just as strongly, can bring us together to enact the reforms that our campaign finance system so sorely needs.